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CWA COMPLAINT

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DJ#:

Case Name:

Court: CA N.D. Cal.; 9th Cir.

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15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 CALIFORNIA RIVER WATCH, an IRC
18 Section 501(c)(3) non-profit, public
19 benefit corporation,
20 Plaintiff,
21 v.

22 ZANKER ROAD RESOURCE
23 MANAGEMENT, LTD., Z-BEST
24 COMPOSTING FACILITY,

25 Defendants.
26
27
28

CASE NO: 5:16-cv-06176 NC

**CERTIFICATE OF SERVICE OF
COMPLAINT ON UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY AND UNITED STATES
DEPARTMENT OF JUSTICE**

CERTIFICATE OF SERVICE

I am employed in the County of Sonoma, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 6037 Nicklaus Loop North, Keizer, OR 97303. On the date set forth below, I served the following described document(s):

- **COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL PENALTIES, AND DECLARATORY RELIEF (Environmental - Clean Water Act - 33 U.S.C. § 1251-et seq.)**


on the following parties by placing a true copy in a sealed envelope, addressed as follows:

Citizen Suit Coordinator
U.S. Dept. of Justice
Environmental & Natural Resource Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

[X] (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily familiar with the practices of Law Office of Jack Silver for processing of correspondence; said practice being that in the ordinary course of business, correspondence is deposited with the United States Postal Service the same day as it is placed for processing.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed on October 27, 2016 at Keizer, Oregon.


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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 CALIFORNIA RIVER WATCH, an
13 IRC § 501(c)(3), non-profit, public
benefit corporation,

14 Plaintiff,

15 v.

16 ZANKER ROAD RESOURCE
MANAGEMENT, LTD., Z-BEST
COMPOSTING FACILITY,

17 Defendants.
18 _____/

Case No.: 5:16-cv-06176 NC

**COMPLAINT FOR INJUNCTIVE
RELIEF, CIVIL PENALTIES,
AND DECLARATORY RELIEF**

(Environmental - Clean Water Act
33 U.S.C. § 1251 *et seq.*)

19 Plaintiff CALIFORNIA RIVER WATCH (“RIVER WATCH”) hereby brings this civil
20 action pursuant to the Federal Water Pollution Control Act, also known as the Clean Water Act
21 (“CWA”), 33 U.S.C. §§ 1251 *et seq.*

22 **I. INTRODUCTION**

23 1. This action is a citizen suit for injunctive relief, civil penalties, and remediation brought
24 against Defendants ZANKER ROAD RESOURCE MANAGEMENT, LTD., and Z-BEST
25 COMPOSTING FACILITY (“Defendants”) for their failure to comply with NPDES General
26 Permit No. CAS000001, State Board Order No. Order No. 2014-0057-DWQ, a violation of
27 CWA § 301(a) pursuant to CWA § 505(a)(1)(B).

28 2. On or about July 5, 2016, RIVER WATCH provided notice of Defendants’ violations of

1 the CWA to the (1) Administrator of the United States Environmental Protection Agency
2 (“EPA”), (2) EPA’s Regional Administrator for Region Nine, (3) Executive Director of the State
3 Water Resources Control Board (“State Board”), (4) Executive Officer of the North Coast
4 Regional Water Quality Control Board (“Regional Board”), and (5) Defendants, as required by
5 the CWA, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of RIVER WATCH’s 60-Day
6 Notice of Defendants’ Violations (“Notice”) is attached as **EXHIBIT A**, and is incorporated by
7 reference. Defendants, the Regional Board, the State Board, the Regional and National
8 Administrators of EPA all received this Notice.

9 3. More than sixty days have passed since RIVER WATCH’s Notice was served on
10 Defendants, the Regional Board, the State Board, and the Regional and National EPA
11 Administrators. RIVER WATCH is informed and believes, and thereupon alleges, that neither
12 the EPA nor the State of California has commenced or is diligently prosecuting a court action
13 to redress the violations alleged in this Complaint. This action’s claim for civil penalties is not
14 barred by any prior administrative penalty under section 309(g) of the CWA, 33 U.S.C. §
15 1319(g).

16 **II. JURISDICTION and VENUE**

17 4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331
18 (federal question), and 33 U.S.C. § 1365(a) (CWA citizen suit jurisdiction). The relief requested
19 is authorized pursuant to 28 U.S.C. §§ 2201-2202 (declaratory relief), 33 U.S.C. §§ 1319(b),
20 1365(a) (injunctive relief), and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

21 5. Venue is proper because Defendants and their discharging Facility reside, and the events
22 or omissions giving rise to RIVER WATCH’s claims occurred, in this District. 28 U.S.C. §
23 1391(b)(1), (2). Venue is also proper because the Facility’s CWA violations have occurred and
24 are occurring within the District. 33 U.S.C. § 1365(c)(1).

25 **III. PARTIES**

26 6. RIVER WATCH is, and at all times relevant to this Complaint was, an Internal Revenue
27 Code § 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of
28 California, with headquarters located in Sebastopol, California and mailing address of 290 S.

1 Main Street, #817, Sebastopol, California 95472. The specific purpose of RIVER WATCH is
2 to protect, enhance and help restore surface and ground waters of California including rivers,
3 creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna,
4 and to educate the public concerning environmental issues associated with these environs.
5 Members of RIVER WATCH have interests in the waters and watersheds which are or may be
6 adversely affected by Defendants' violations as alleged herein. Said members may use the
7 effected waters and watershed areas for recreation, sports, fishing, swimming, hiking,
8 photography, nature walks and/or the like. Furthermore, the relief sought will redress the injury
9 in fact, likelihood of future injury, and interference with the interests of said members.
10 Defendants' ongoing violations of the General Permit and the CWA will cause irreparable harm
11 to members of RIVER WATCH for which they have no plain, speedy, or adequate remedy. The
12 relief requested will redress the ongoing injury in fact to RIVER WATCH's members.

13 7. RIVER WATCH is informed and believes, and on such information and belief alleges,
14 that Defendants ZANKER ROAD RESOURCE MANAGEMENT, LTD., and Z-BEST
15 COMPOSTING FACILITY are the owners and/or operators of the business identified under
16 STANDARD INDUSTRIAL CLASSIFICATION ("SIC") Codes 2875 ("Fertilizers, Mixing
17 Only"), 2499 (Wood Products, Not Elsewhere Classified"), and 4212 ("Local Trucking Without
18 Storage") located at 980 State Highway 25, Gilroy, Santa Clara County, California (the
19 "Facility"). ZANKER ROAD RESOURCE MANAGEMENT, LTD. was formed in 1985, and
20 is identified in the Regional Board's records as the owner and/or operator of the Facility. Z-
21 BEST COMPOSTING FACILITY was formed in 1987 and is the operator of the Facility.
22 Richard A. Cristina is identified as the owner of the Facility, and John Doyle is identified as the
23 operations manager of the Facility in the documents on file with the Regional Board.

24 **IV. CLEAN WATER ACT**

25 8. Congress declared that the CWA was designed to "restore and maintain the chemical,
26 physical, and biological integrity of the Nation's waters" through federal and state cooperation
27 to develop and implement "programs for preventing, reducing, or eliminating the pollution of
28 navigable waters and ground waters." 33 U.S.C. §§ 1251(a), 1252(a). In furtherance of these

goals, the CWA prohibits all discharges except those in compliance with an NPDES permit. 33 U.S.C. §§ 1311, 1342. The EPA promulgates regulations to implement the NPDES permitting system at 40 C.F.R. parts 122-129.

9. Pursuant to the requirements of the CWA, the State Board developed a General Permit for Storm Water Discharges Associated With Industrial Activity (“General Permit”) within the State of California. 33 U.S.C. § 1342; 40 C.F.R. § 122.26; NPDES General Permit No. CAS000001, State Board Order No. 92-12-DWQ, amended by Order No. 97-03-DWQ and Order No. 2014-0057-DWQ. All facility operators subject to permitting must apply to their Regional Board for coverage under the General Permit or another NPDES permit. *Id.*; Failure to do so, and failure to comply strictly with all permit requirements, violates the CWA. *Id.*; *see also* General Permit § XXI.Q.

10. The General Permit requires that the discharger (1) prepare, “certify and submit” an Annual Report on the year’s discharge activities including compliance with the CWA and General Permit (General Permit § XVI), (2) perform visual observations and conduct sampling and analysis to monitor any discharges (General Permit § XI), and (3) prepare a comprehensive site-specific Storm Water Pollution Prevention Plan (“SWPPP”) (General Permit § X), among other requirements. Where a facility operator fails to “comply with all standard conditions [of the] General Permit,” it shall “constitute[] a violation of the [CWA] and the Water Code and is grounds for enforcement action and/or removal from General Permit coverage.” General Permit § XXI.A; 33 U.S.C. § 1342.

11. Under the CWA, dischargers are required to submit an Annual Report summarizing the year’s monitoring and sampling, and addressing any deficiencies in those required actions. General Permit § XVI; State Board Order No. 97-03-DWQ (“1997 General Permit”) § B.14. A discharger’s Annual Report for July 1, 2014 through June 30, 2015 is governed by the previous permit – the 1997 General Permit – which remains in effect for the 2014-2015 Annual Report and enforcement requirements only. General Permit §§ Introduction (“as of July 1, 2015 [the General Permit] supersedes [the 1997 General Permit] excerpt for [the 1997 General Permit’s] requirement to submit annual reports by July 1, 2015 and except for enforcement purposes”), I.7

1 (same). Under the 1997 General Permit, dischargers were required to “submit an Annual Report
2 by July 1 of each year” to the Regional Board, which includes “a summary [and evaluation] of
3 visual observations and sampling results,” “laboratory reports,” a compliance evaluation report,
4 and “an explanation of why a facility did not implement any activities required by the General
5 Permit.” 1997 General Permit § B.14; *see also* General Permit § XVI (same requirements with
6 minor changes in the current General Permit). Failure to submit an adequate Annual Report
7 violates the General Permit, and subsequently the CWA. 1997 General Permit § C.1; General
8 Permit § XXI.A; 33 U.S.C. § 1342.

9 12. Pursuant to sections B.4 and B.5 of the 1997 General Permit and section XI.B of the
10 current General Permit, dischargers are required to monitor all discharges to ensure compliance
11 with the provisions and purpose of the CWA.

12 a. The 1997 General Permit required dischargers to perform monthly visual
13 observations, as well as sampling and analysis for the “first storm event of the wet
14 season” and at least one other storm event for “[a]ll storm water discharge
15 locations.” 1997 General Permit §§ B.4.a, B.5.a. Where sampling from the first
16 storm event of the season was not possible, dischargers were required to “explain
17 in the Annual Report why [that] storm event was not sampled.” 1997 General
18 Permit § B.5.a. Failure to perform the required monitoring or provide any
19 necessary explanations violates the CWA. 1997 General Permit § C.1; General
20 Permit § XXI.A; 33 U.S.C. § 1342.

21 b. The current General Permit similarly requires extensive monitoring of discharges,
22 including visual observations, sampling, and analysis. General Permit § XI. The
23 General Permit mandates that dischargers “collect and analyze storm water
24 samples from two (2) [Qualifying Storm Events (“QSEs”)] within the first half of
25 each reporting year (July 1 to December 31) and two (2) QSEs within the second
26 half of each reporting year (January 1 to June 30)” “from each drainage area at all
27 discharge locations.” General Permit §§ XI.B.2 (first quote), XI.B.4 (second
28 quote). Dischargers are then required to “submit all sampling and analytical results

for all [samples] via [the Storm Water Multiple Application and Report Tracking System (“SMARTS”)] within 30 days of obtaining all results for each sampling event.” General Permit § XI.B.11.a. Failure to comply with these General Permit provisions violates the CWA. General Permit § XXI.A (“Permit noncompliance constitutes a violation of the [CWA] and the Water Code and is grounds for enforcement action” or NPDES coverage termination); 33 U.S.C. § 1342.

13. The General Permit also requires dischargers to “develop and implement a site specific SWPPP for each industrial facility covered by [the] General Permit.” General Permit §§ I.I.54, X.A. The SWPPP must contain (1) the facility name and contact information, (2) a site map, (3) a list of industrial materials, (4) descriptions of potential pollution sources, (5) an assessment of those sources, (6) minimum Best Management Practices (“BMPs”), (7) advanced BMPs, if necessary, (8) a monitoring implementation plan, (9) an annual evaluation, and (10) dates when the SWPPP was prepared and amended. General Permit § X.A. All of this information must be submitted via SMARTS “within 30 days” of any significant revisions to the SWPPP, or every three months where there are only minor revisions. General Permit §§ X.B.2, X.B.3.

a. Among the many requirements for an SWPPP, a discharger “shall prepare a site map” that includes “[t]he facility boundary, storm water drainage areas within the facility boundary,” “storm water collection and conveyance systems, associated discharge locations,” “[l]ocations and descriptions of structural control measures,” “[i]dentification of all impervious areas,” locations of exposed materials, and “[a]reas of industrial activity subject to this General Permit.” General Permit § X.E.3; General Permit Attachment D § F.2 (listing requirements for site map). Failure to prepare an adequate site map renders the SWPPP deficient. General Permit § X.E.

b. All dischargers are required to describe and assess each potential pollutant source in their SWPPP. General Permit § X.G. “The [d]ischarger shall ensure the SWPPP describes each industrial process,” “each material handling and storage area,” “all industrial activities that generate a significant amount of dust or particulate that

may be deposited within the facility boundaries,” a “list of any industrial materials that have spilled or leaked,” all non-storm water discharges, and “the facility locations where soil erosion may” occur. General Permit § X.G.1. The discharger shall also “ensure that the SWPPP includes a narrative assessment of all areas of industrial activity with potential industrial pollutant sources.” General Permit § X.G.2.a. The discharger’s assessment of these sources must include, among other things, the location, type, quantity and physical characteristics of the pollutant, the potential for exposure, all sampling and inspection records, and the potential effectiveness of the current BMPs to reduce or prevent pollutants in storm water discharges. General Permit § X.G.2.a.

c. The SWPPP must also “implement and maintain” the minimum BMPs described in the general permit (General Permit § X.H.1) and any advanced BMPs “necessary to reduce or prevent discharges of pollutants” (General Permit § X.H.2). The discharger shall “identify and describe” the implemented BMPs on which it relies to reduce discharges. General Permit § X.C.1.b. These BMP descriptions shall include:

- i. The pollutant(s) the BMP is designed to reduce or prevent... ;
- ii. The frequency, time(s) of day, or conditions where the BMP is scheduled for implementation;
- iii. The locations within each area of industrial activity or industrial pollutant source where the BMP shall be implemented;
- iv. The individual and/or position responsible for implementing the BMP;
- v. The procedures . . . and/or instructions to implement the BMP effectively;
- vi. The equipment and tools necessary to implement the BMP effectively; and,
- vii. The BMPs that may require more frequent visual observations beyond the monthly visual observations as described in Section XI.A.1. General Permit § X.H.4.a. The minimum BMPs that are required in the SWPPP include Good Housekeeping (General Permit § X.H.1.a), Preventative Maintenance

(General Permit § X.H.1.b), Spill and Leak Prevention and Response (General Permit § X.H.1.c), Material Handling and Waste Management (General Permit § X.H.1.d), Erosion and Sediment Controls (General Permit § X.H.1.e), Employee Training Programs (General Permit § X.H.1.f), and Quality Assurance and Record Keeping (General Permit § X.H.1.g). The advanced BMPs that may be implemented as necessary include Exposure Minimization (General Permit § X.H.2.b.i), Storm Water Containment and Discharge Reduction (General Permit § X.H.2.b.ii), Treatment Control (General Permit § X.H.2.b.iii), or other BMPs “necessary to meet effluent limitations of this General Permit” (General Permit § X.H.2.b.iv). All dischargers must identify and describe the BMPs implemented. General Permit §§ X.C.1.b, X.H.1, X.H.2, X.H.4.a. Failure to do so invalidates the SWPPP and violates the CWA. General Permit §§ X.C.1.b, X.H, XXI.A; 33 U.S.C. § 1342.

- d. Furthermore, the SWPPP must be signed and certified as “true, accurate, and complete,” and therefore cannot contain internal contradictions. General Permit §§ I.I.54, II.A., XXI.L; General Permit Appendix 1. Internal inconsistencies would render the SWPPP ineffective under the General Permit and would require revisions to the SWPPP and submission to the SMARTS database. Similarly, missing or incomplete information would require additional research and analysis, revision of the SWPPP and the necessary submission to SMARTS. An incomplete or inconsistent SWPPP violates the General Permit and subsequently the CWA. General Permit §§ XXI.A; 33 U.S.C. § 1342.

14. The “General Permit requires control of pollutant discharges using [Best Available Technology Economically Achievable (“BAT”)] and [Best Conventional Pollutant Control Technology (“BCT”)] to reduce and prevent discharges of pollutants, and any more stringent effluent limitations necessary for receiving waters to meet applicable water quality standards.” General Permit § I.D.32. “Dischargers shall implement BMPs that comply with the BAT/BCT

1 requirements of this General Permit to reduce or prevent discharges of pollutants in their storm
2 water discharge in a manner that reflects best industry practice considering technological
3 availability and economic practicability and achievability.” General Permit § V.A.; *see also* 44
4 C.F.R. § 125.3(a)(2)(i)-(v) (Jan 4, 1989) (NPDES Permits must include technology-based
5 treatment requirements).

6 The General Permit requires that:

- 7 a. All discharges of storm water to waters of the United States are prohibited except
8 as specifically authorized by the General Permit or another NPDES permit.
- 9 b. Except for Non-storm water discharges (NSWDs) authorized in Section IV,
10 discharges of liquids or materials other than storm water, either directly or
11 indirectly to waters of the United States, are prohibited unless authorized by
12 another NPDES permit. Unauthorized NSWDs must be either eliminated or
13 authorized by a separate NPDES permit.
- 14 c. Industrial storm water discharges and authorized NSWDs that contain pollutants
15 that cause or threaten to cause pollution, contamination, or nuisance as defined in
16 section 13050 of the Water Code, are prohibited.
- 17 d. Discharges that violate any discharge prohibitions contained in applicable
18 Regional Water Board Water Quality Control Plans (Basin Plans), or statewide
19 water quality control plans and policies are prohibited.

20 15. Under the CWA, “any citizen may commence a civil action” “against any person . . . who
21 is alleged to be in violation of (A) an effluent standard or limitation under [the CWA] or (B) an
22 Order issued by . . . a State with respect to such a standard or limitation.” 33 U.S.C. § 1365(a)(1).
23 “No action may be commenced . . . prior to sixty days after the plaintiff has given notice of the
24 alleged violation (i) to the Administrator [of the EPA], (ii) to the State in which the alleged
25 violation occurs, and (iii) to any alleged violator of the standard, limitation, or order.” 33 U.S.C.
26 § 1365(b)(1)(A). By including a citizen suit provision in the CWA, Congress ensured that the
27 purposes and requirements of the CWA would be enforced, either by the United States
28 government or by concerned citizens.

1 16. In furtherance of the water preservation goals established by the CWA, the citizen suit
2 provision confirms the district court's jurisdiction "to apply any appropriate civil penalties under
3 section 1319(d)." 33 U.S.C. § 1365(a). Section 1319(d) declares that "[a]ny person who violates
4 . . . any permit condition or limitation implementing any of such sections in a[n NPDES] permit
5 . . . shall be subject to a civil penalty not to exceed \$[37,500] per day for each violation." 33
6 U.S.C. § 1319(d); 40 C.F.R. § 19.4; General Permit § XXI.Q.1.

7 17. Violations of provisions of the General Permit, including those detailed below, constitute
8 violations of the CWA and are subject to civil penalties. General Permit § XXI; 33 U.S.C. §§
9 1319(d), 1342; 40 C.F.R. §§ 19.1-19.4.

10 **V. FACTUAL ALLEGATIONS WHICH GIVE RISE TO CLAIMS**

11 18. Defendants' Facility is a composting operation. It receives an average of 1,500 tons per
12 day of green/yard waste, and up to 600 tons per day of municipal solid waste/food wastes
13 composting. RIVER WATCH is informed and believes that the Facility falls under SIC Codes
14 2875 ("Fertilizers, Mixing Only"), 2499 ("Wood Products, Not Elsewhere Classified"), and 4212
15 ("Local Trucking Without Storage").

16 19. RIVER WATCH is informed and believes that large quantities of composted materials
17 at the Facility are exposed to storm water, eroded by wind, and can otherwise contaminate the
18 surrounding watershed.

19 20. Defendants obtained NPDES coverage under the General Permit on or about October 8,
20 1997. The State Board assigned Waste Discharge Identification ("WDID") number 3
21 43I013449.

22 21. RIVER WATCH alleges Defendants are routinely violating a central substantive and
23 procedural requirement of the CWA and the General Permit relating to composting services at
24 the Facility by failing to undertake and complete mandated sampling and analysis as required
25 under General Permit § XI.B during the 2014-2015 and 2015-2016 Annual Reporting Years.
26 RIVER WATCH alleges that Defendants failed to obtain any applicable General Permit
27 exemption from the State Board excusing it from conducting the required sampling and analysis.
28 The failure to conduct sampling and analysis undercuts an industrial facility's ability to identify

1 and implement effective BMPs in the Facility SWPPP, resulting in the potential illegal discharge
2 of pollutants (in this case the standard parameters: TSS, oil and grease, and pH; the Table I
3 parameters: iron, nitrate and nitrite nitrogen, lead, zinc, phosphorus; and the “Potential Pollutant
4 Sources and Pollutants” identified in the Facility’s SWPPP).

5 22. RIVER WATCH alleges that the failure to comply strictly with the mandatory terms and
6 conditions governing sampling and analysis, and the resulting failure to ensure the
7 implementation of effective BMPs as required by the General Permit (identified
8 comprehensively in the Federal Environmental Protection Agency’s (“EPA”) Industrial
9 Stormwater Fact Sheet Series, “Sector C: Chemical and Allied Products Manufacturing and
10 Refining” (EPA Office of Water, EPA-833-F-06-018, December 2006), results in discharges
11 from the Facility in violation of the CWA’s prohibition with regard to discharging a pollutant
12 from a point source to waters of the United States, in this instance the Pajaro River (a CWA §
13 303(d) waterway impaired for boron, chlordane, chloride, chlorpyrifos, DDD, dieldrin, e-coli,
14 fecal coliform, low dissolved oxygen, nitrate, nutrients, PCBs, pH, sedimentation/siltation,
15 sodium, and turbidity), pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and CWA § 505(f), 33
16 U.S.C. § 1365(f).

17 23. Information available to RIVER WATCH indicates that as a result of these practices,
18 Defendants have side-stepped the key provision of the General Permit governing the
19 composition of a Facility’s storm water and are therefore unable to ensure that storm water
20 containing excessive pollutants is not being discharged during rain events from the Facility to
21 Pajaro River. The Site is bordered on two (2) sides by waters of the United States. Ground
22 waters are both adjacent to and hydrologically connected to these waters. Defendants’
23 documents reviewed by RIVER WATCH indicate materials on the Site pose a threat to both
24 ground waters and surface waters in violation of the General Permit.

25 **VI. CLAIM FOR RELIEF**

26 **(Violations of the Clean Water Act pursuant to 33 U.S.C. § 1365(a)(1)(B))**

27 24. Each and every allegation set forth in this Complaint is incorporated herein by reference

28 25. Each day since July 1 2014, Defendants have failed and are continuing to fail to comply

1 with the NPDES permitting requirements of the CWA, and in particular the General Permit,
2 because Defendants have failed and continue to fail to:

- 3 a. file an adequate Annual Report;
- 4 b. adequately monitor and sampling discharges;
- 5 c. prepare and certify a compliant SWPPP; and
- 6 d. implement appropriate control technology.

7 26. Each day since July 1, 2014 on which Defendants have discharged unauthorized storm
8 water discharges, NSWDS, liquids, or materials other than storm water, either directly or
9 indirectly to waters of the United States, Defendants are violating the General Permit and thus
10 the CWA.

11 27. Each day since July 1, 2014 on which Defendants have storm water discharges and/or
12 NSWDS containing pollutants that cause or threaten to cause pollution, contamination, or
13 nuisance as defined in section 13050 of the California Water Code, Defendants are violating the
14 General Permit and thus the CWA.

15 28. Each day since July 1, 2014 on which Defendants have discharges that violate any
16 discharge prohibitions contained in applicable Regional Water Board Water Quality Control
17 Plans (Basin Plans), or statewide water quality control plans and policies, Defendants are
18 violating the General Permit and thus the CWA.

19 29. Noncompliance with the General Permit constitutes a violation of the CWA. General
20 Permit § XXI.A; 1997 General Permit § C.1; 33 U.S.C. § 1342.

21 30. Each violation is a separate violation of the CWA.

22 **VII. RELIEF REQUESTED**

23 WHEREFORE, RIVER WATCH respectfully requests that the Court enter judgment
24 providing the following relief:

- 25 1. Declare Defendants to have violated and to be in violation of the CWA;
- 26 2. Issue an injunction ordering Defendants to immediately operate the Facility in compliance
27 with the NPDES permitting requirements in the CWA;
- 28 3. Enjoin Defendants from discharging pollutants from the Facility and to the surface or

1 ground waters surrounding the Facility until such time as Defendants have developed and
2 implemented an adequate SWPPP;

3 4. Order Defendants to pay civil penalties of \$37,500 per day/per violation for each violation
4 of the Act pursuant to 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 (Dec. 11, 2008),
5 19.2-19.4 (Nov. 6, 2013);

6 5. Order Defendants to take appropriate actions to restore the quality of United States waters
7 impaired by their activities on the Facility;

8 6. Order Defendants to pay RIVER WATCH's reasonable attorneys' fees and costs
9 (including expert witness fees), as provided by 33 U.S.C. § 1365(d) and applicable California
10 law; and,

11 7. Award such other and further relief as may be just and proper.
12

13 Dated: October 25, 2016

LAW OFFICE OF JACK SILVER


14 By: 
15 Jack Silver
16 Attorney for Plaintiff
17 CALIFORNIA RIVER WATCH
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EXHIBIT A

LAW OFFICE OF
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Via Certified Mailing – Return Receipt

July 5, 2016

Richard A. Cristina, Owner
William Lineberry, EIT
Zanker Road Resource Management, Ltd.
1500 Berger Drive
San Jose, CA 95112

John Doyle, Operations Manager
Head of Agency
Z-Best Composting Facility
980 State Highway 25
Gilroy, CA 95020

**Re: Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act (Clean Water Act)**

Dear Mr. Cristina, Mr. Lineberry, Mr. Doyle, Head of Agency:

NOTICE OF ALLEGED VIOLATIONS

This Notice is provided on behalf of California River Watch (“River Watch”) in regard to violations of the Clean Water Act (“CWA” or “Act”) 33 U.S.C. §1251 *et seq.*, that River Watch believes are occurring at the Z-Best Composting Facility owned and operated by Zanker Road Resource Management, Ltd. (“the Facility”) and located at 980 State Highway 25 in Gilroy, California. Notice is being sent to you as the responsible owners, operators, and managers of the Facility and real property. This Notice addresses the violations of the CWA, including violation of the terms of the General California Industrial Storm Water Permit, and the unlawful discharge of pollutants from the Facility to the Pajaro River, a CWA § 303(d) waterway “impaired for boron, chlordane, chloride, chlorpyrifos, DDD, dieldrin, e-coli, fecal coliform, low dissolved oxygen, nitrate, nutrients, PCBs, pH, sedimentation/siltation, sodium, and turbidity” (see Page i and Section 3.4 of the Facility’s June 2015 Storm Water Pollution Prevention Plan).

CWA §301(a), 33 U.S.C. §1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual National Pollutant Discharge Elimination System (“NPDES”)

permit or a general NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C. § 1342. CWA § 402(p), 33 U.S.C. § 1342(p), establishes a framework for regulating storm water discharges under the NPDES program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. Environmental Protection Agency (“EPA”) has authorized California’s State Water Resources Control Board to issue NPDES permits including general NPDES permits in California.

The State Water Resources Control Board elected to issue a statewide general permit for industrial discharges, and issued the General Permit on or about November 19, 1991, modified it on or about September 17, 1992, reissued it on or about April 17, 1997, and amended it significantly on April 1, 2014 (effective July 1, 2015), pursuant to CWA § 402(p). In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and complied with its terms.

CWA § 505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act. Notice must be given to the alleged violator, the EPA and the state in which the violations occur. As required by the CWA, this Notice provides notice of the violations that have occurred, and continue to occur at the Facility. Consequently, Z-Best Composting Facility and Zanker Road Resource Management, Ltd. (collectively, the “Discharger”) is placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, NPDES permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA § 301(a), § 402(p), and § 505(a)(1), as well as the failure to comply with requirements set forth in the Code of Federal Regulations and the Central Coast Regional Water Quality Control Board (“RWQCB”) Water Quality Control Plan or “Basin Plan.”

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement, River Watch notices the Discharger of ongoing violations of the substantive and procedural requirements of CWA § 402(p) and violations of NPDES Permit No. CAS000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ and Order No. 2014-0057-DWQ (the “General Permit”) relating to the composting services and operations covered under SIC Codes 2875 (additional SIC Codes 2499 and 4212 are identified in the Facility SWPPP).

The Discharger, rather than seeking coverage under an individual NPDES permit, filed a Notice of Intent (“NOI”) agreeing to comply with the terms and conditions of the General Permit. The State Water Resources Control Board originally approved the NOI on or about

October 8, 1997, and the Discharger was assigned Waste Discharger Identification (“WDID”) number 3 431013449. River Watch, on the basis of eye-witness reports and records publicly available and/or records in the possession and control of the Discharger, contends that in the continuing operation of the Facility, the Discharger has failed and is failing to comply with the terms and conditions of the General Permit – specifically the requirements governing comprehensive sampling and monitoring, and as applicable the preparation and implementation of effective Best Management Practices (“BMPs”) in its Storm Water Pollution Prevention Plan (“SWPPP”) ensuring the elimination of all non-authorized storm water discharges from the Facility.

Compliance with these General Permit requirements is central to the effectiveness of the General Permit program. River Watch contends the Discharger has failed and is failing to comply with the following specific General Permit requirements as revealed in the sampling and monitoring sections of the 2014-2015 Annual Report and as identified on SMARTS for the 2015-2016 annual reporting year, as follows:

a. Alleged Violations During the 2014-2015 Annual Reporting Year

The Discharger failed to provide any sampling, providing the explanation “[n]o discharge occurred.” River Watch alleges that publicly available rain data during this period identifies dates on which rainfall in excess of .10 of an inch (a qualifying storm event) was reported in Gilroy, identifying the conditions when storm water samples should have been collected and analyzed. The failure to fully sample precluded the Facility from determining whether BMPs in place effectively eliminated all non-authorized storm water discharges from the Facility.

b. Alleged Violations During the 2015-2016 Annual Reporting Year

The General Permit in effect beginning July 1, 2015 (Order No. 2014-0057-DWQ), imposes new sampling and reporting requirements. Under Section XI.B. (“Sampling and Analysis”), the Discharger must collect and analyze storm water samples from two (2) qualifying storm events within the first half of each reporting year (July 1 to December 31), and from two (2) qualifying storm events within the second half of each reporting year (January 1 to June 30). The sampling and analytical results must be reported via SMARTS within thirty (30) days of obtaining the results. This General Permit requirement is specifically noted in Section 8 of the Facility’s SWPPP.

A review of the SMARTS database on June 30, 2016 revealed the Discharger has failed to provide any of the mandated samples from qualifying storm events to date during the 2015-2016 Annual Reporting year. The failure to do so in this case is a violation of the General Permit.

2. *The activity alleged to constitute a violation.*

The Discharger’s operations are classified in the NOI under SIC Code 2875 (“Fertilizers, Mixing Only”) although the Facility’s SWPPP further identifies operations at the facility under SIC Codes 2499 (“Wood Products, Not Elsewhere Classified”) and 4212 (“Local Trucking Without Storage”), described broadly as “yard waste composting” (*see*

<http://www.zankerrecycling.com/compost/>; June 30, 2016). Operations at the Facility create a range of "Potential Pollutant Sources," including those for which sampling and monitoring is specifically required under the General Permit, as well as for those identified in Section 4 of the June, 2015 SWPPP ("Potential Pollutant Sources and Pollutants") and associated Tables.

The work at the Facility is conducted primarily outdoors where it is subject to rain events. Because there is no State Water Resources Control Board or RWQCB exemption from the collecting and analyzing of the range of pollutants identified above, and without implementing effective BMPs, there are unlawful discharge(s) of the pollutants identified above from the Facility to Pajaro River— a water of the United States.

To properly regulate these activities and control the discharge of these types of pollutants, the State Water Resources Control Board requires industrial facilities to obtain and comply with the terms and conditions of an individual NPDES permit or seek coverage under the General Permit (or obtain a proper exemption under the terms of the General Permit from its requirements). Review of the public record by River Watch reveals the Discharger obtained coverage under the General Permit for the Facility, but fails to comply with its environmentally protective requirements, in particular the implementation of effective BMPs.

Note that in addition to the pollution controls in the General Permit, the RWQCB has established water quality standards applicable to facilities such as that operated by the Discharger in Gilroy. The RWQCB Basin Plan includes both a narrative toxicity standard and a narrative oil and grease standard, providing that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." The Basin Plan establishes limits on metals, solvents, pesticides and other hydrocarbons.

3. *The person or persons responsible for the alleged violation.*

The persons and entities responsible for the alleged violations are Z-Best Composting Facility, Zanker Road Resource Management, Ltd., and the owners and Head of Agency, referred to in this Notice as the Discharger.

4. *The location of the alleged violation.*

The location or locations of the various violations is the permanent address of the Facility at 980 State Highway 25 in Gilroy, California, including the waters of Pajaro River – a water of the United States.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

The range of dates covered by this Notice is from July 5, 2011 to July 5, 2016. River Watch will from time to time further update this Notice to include all violations which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving this Notice is California River Watch, an Internal Revenue Code § 501(c)(3) nonprofit, Public Benefit corporation organized under the laws of the State of California. River Watch's mailing address is 290 South Main Street, #817, Sebastopol, California 95472. River Watch is dedicated to protecting, enhancing and helping to restore surface and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and to educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be directed to:

David Weinsoff, Esq.
Law Office of David Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
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Email: david@weinsofflaw.com

REMEDIAL MEASURES REQUESTED

River Watch believes that implementation of the following remedial measures are necessary in order to bring the Discharger into compliance with the CWA and reduce the biological impacts from its non-compliance upon public health and the environment surrounding the Facility:

1. Prohibition of the discharges of pollutants including, but not limited to, pH, total suspended solids, total organic carbon or oil & grease (the standard pollutants); with additional prohibitions for iron, N+N, lead, zinc, and phosphorus, all of which are specific General Permit Section XI. (Monitoring) "Table 1: Additional Analytical Parameters" required to be sampled for facilities identified under SIC codes 2875.
2. Compliance with the terms and conditions of the General Permit, and BMPs detailed in the EPA's Industrial Stormwater Fact Sheet Series: "Sector C: Chemical and Allied Products Manufacturing and Refining" (EPA Office of Water, EPA-833-F-06-018, December 2006; https://www.epa.gov/sites/production/files/2015-10/documents/sector_c_chemical.pdf).
3. Compliance with the storm water sampling, monitoring and reporting requirements of the General Permit, specifically including for "Potential Pollutant Sources" as identified in the Facility's SWPPP.
4. Preparation and submittal to the RWQCB of a "Reasonable Potential Analysis" for the Facility and its operations.

5. Preparation of further updates to the Facility's 2015 SWPPP that include, but are not limited to, additional BMPs that address the violations alleged in this Notice (with a copy provided to River Watch).

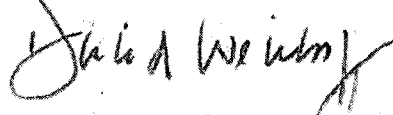
CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, and/or nature walks. Their health, use, and enjoyment of this natural resource is specifically impaired by the Discharger's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the Discharger to contact counsel for River Watch within **20 days** after receipt of this Notice to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit to the Facility. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Discharger is in compliance with the strict terms and conditions of the General Permit, River Watch intends to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,



David Weinsoff

DW:lhbm

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Executive Director
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